Scully-Walton, Inc. *and* Local 531, International Brotherhood of Teamsters, AFL–CIO. Case 2–CA–25068

March 10, 1992

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND RAUDABAUGH

Upon a charge filed by the Union, Local 531, International Brotherhood of Teamsters, AFL–CIO, on April 25, 1991, the General Counsel of the National Labor Relations Board issued a complaint on September 26, 1991, against Scully-Walton, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On December 30, 1991, the General Counsel filed a Motion for Summary Judgment. On December 31, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all of the allegations in the Complaint shall be deemed to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that counsel for the General Counsel, by letter dated December 10, 1991, notified the Respondent that unless an answer was received by December 20, 1991, a Motion for Summary Judgment would be filed. The undisputed allegations also disclose that on December 19, 1991, the Respondent, by telephone, requested an extension of time to file its answer until December 23, 1991. A letter confirming the extension was sent by certified and regular mail by counsel for the General Counsel on December 19, 1991. It notified the Respondent that unless an answer was received by December 23, 1991, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a domestic corporation with an office and place of business in New York, New York, is engaged in the transportation and assembling of medical supplies. Annually, the Respondent ships and sells products valued in excess of $50,000 directly to enterprises located outside the State of New York. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

Refusal to Bargain

At all material times, the Union has been the designated exclusive collective-bargaining representative of the Respondent's employees, and has been recognized as such by the Respondent, in the following appropriate unit:

> All full-time and regular part-time employees employed by Respondent, excluding office employees, guards, professional employees and supervisors as defined in the Act.

Recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective by its terms from February 1, 1988, through January 31, 1991.

At all material times, the Union has been, and is, by virtue of Section 9(a) of the Act, the exclusive collective-bargaining representative of the Respondent's employees in the above-described unit.

About November 15, 1990, the Union notified the Respondent, by letter, of its desire to meet with the Employer to negotiate a successor collective-bargaining agreement concerning the rates of pay, wages, hours of employment, and other terms and conditions of employment of the unit employees. About March 4, 1991, the Union, by letter, reiterated its desire to meet and bargain with the Respondent to negotiate a successor collective-bargaining agreement.

The Respondent failed to respond to the Union's November 19, 1991 written request to meet and bargain. Further, the Respondent canceled, without prior notice, a negotiating meeting scheduled for

April 17, 1991. The Respondent then failed to meet for a negotiating session scheduled for May 24, 1991. The Respondent did meet with representatives from the Union about July 9, 1991, for the purpose of collective-bargaining negotiations. Since July 9, 1991, however, the Respondent has failed and refused to meet and bargain with the Union concerning rates of pay, wages, hours of employment, and other terms and conditions of employment of employees in the unit despite repeated telephone calls by the Union reiterating its desire to meet with the Respondent to negotiate a successor collective-bargaining agreement.

By its actions, the Respondent has failed and refused, and is failing and refusing, to bargain collectively and in good faith with its employees' representative, the Union, in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSIONS OF LAW

By failing and refusing to bargain collectively and in good faith to negotiate a successor collective-bargaining agreement with the Union, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

We shall order the Respondent to cease and desist from refusing to meet and bargain with the Union in good faith to negotiate a successor collective-bargaining agreement.

We shall order the Respondent to bargain in good faith with Local 531, International Brotherhood of Teamsters, AFL–CIO, in the appropriate collective-bargaining unit and, if an understanding is reached, to embody the understanding in a signed agreement.

ORDER

The National Labor Relations Board orders that the Respondent, Scully-Walton, Inc., New York, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith to negotiate a successor collective-bargaining agreement with Local 531, International Brotherhood of Teamsters, AFL–CIO, as the exclusive collective-bargaining representative of its employees in the following appropriate unit:

> All full-time and regular part-time employees employed by Respondent, excluding office employees, guards, professional employees and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain in good faith with the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

(b) Post at its facility in New York, New York, copies of the attached notice marked "Appendix."[1] Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[1] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain collectively and in good faith to negotiate a successor collective-bargaining agreement with Local 531, International Brotherhood of Teamsters, AFL–CIO, as the exclusive collective-bargaining representative of our employees in the following appropriate unit:

All full-time and regular part-time employees employed by the Employer, excluding office employees, guards, professional employees and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, meet and bargain with the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit concerning their terms and conditions of employment and, if an understanding is reached, embody that understanding in a signed agreement.

SCULLY-WALTON, INC.